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N. J. I. F. 1206 (Amended)



Issued July 14, 1932

United States Department of Agriculture

FOOD AND DRUG ADMINISTRATION

NOTICE OF JUDGMENT UNDER THE INSECTICIDE ACT

[Given pursuant to section 4 of the insecticide act]

[Approved by the Secretary of Agriculture, Washington, D. C.]

1206. Harris Roach Tabs misbranded by failing to state inert ingredients. Ineffectiveness of Tabs, and that they were harmful and poisonous to human beings and pets, not proven. Decree of condemnation and destruction. (I. & F. No. 1382. S. No. 168.)

The Harris Roach Tabs offered for sale in the District of Columbia as herein-after set forth were contained in packages the label of which bore claims that the article possessed insecticidal properties. The article was claimed to be harmless and nonpoisonous to human beings and pets. The label did not bear a statement of the name and percentage amount of each inert ingredient; nor, in lieu thereof, a statement of the names and percentage amounts of each active ingredient and the total percentage of inert ingredients.

On October 7, 1925, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Supreme Court of the district aforesaid, holding a District Court, a libel (which was subsequently amended), praying seizure and condemnation of seven packages of Harris Roach Tabs. It was alleged in the libel as amended that the article was in possession of Lansburgh & Bros., at their place of business in the District of Columbia, and was there being offered for sale, and that it was a misbranded insecticide within the meaning of the insecticide act of 1910.

The libel alleged that the article was misbranded in that the statements regarding the said article, to wit, "Harris Roach Tabs a Chemically Prepared Food For Killing Roaches and Waterbugs * * * Guaranteed to free your home or buildings of Roaches and Waterbugs in three weeks. * * * A New Discovery. Created by popular demand an exterminator of waterbugs and roaches. Experts have reported that insect life is on the increase even in the face of intensive use of the old-fashioned contact or repellent powders and liquids. Old methods have been discarded for the principle that will guarantee absolute extermination of waterbugs and roaches. Harmless to * * * pets. * * * Non-poisonous to Humans and Pets. Roach Tabs have a disagreeable taste which will prevent their being eaten by children. Should they be swallowed, however, no serious results would follow," borne on the label affixed to the packages containing the article, were false and misleading; and by reason of the said statements the article was labeled so as to deceive and mislead the purchaser, in that they represented that the article when used as directed would be an effective remedy against and would exterminate roaches and waterbugs and would free a house or building of roaches and waterbugs in three weeks, and that it was harmless to humans and pets; whereas the libel alleged that the article when used as directed would not be an effective remedy against and would not exterminate roaches and waterbugs and would not free a house or building of roaches and waterbugs in three weeks, and was not harmless and nonpoisonous to humans and pets, but was harmful and poisonous, since it contained boric acid and sodium fluoride.

Misbranding was alleged for the further reason that the article consisted partially of inert substances or ingredients, namely, substances that do not

prevent, destroy, repel, or mitigate insects, and the name and percentage amount of each of the said inert substances so present therein were not stated plainly and correctly on the label affixed to the package containing the article; nor, in lieu thereof, were the name and percentage amount of each substance or ingredient of the article having insecticidal properties, and the total percentage of the inert ingredients present in the article, stated plainly and correctly on the label.

On November 7, 1925, P. F. Harris, Washington, D. C., filed a claim and answer denying the material allegations of the libel. On February 26, 1931, the case came on for hearing before the court and evidence was introduced, both oral and documentary, by the Government and claimant, and arguments on the law and facts were submitted by counsel for the Government and by the claimant. On March 10, 1931, judgment was entered finding the product misbranded and ordering that it be condemned and destroyed. On April 8, 1931, a motion for a finding of fact was filed by the claimant. The following memorandum opinion was handed down by the court on May 2, 1931, in overruling this motion: (Cox, J.) "Upon consideration of the libel, and of the evidence introduced on the hearing, the court has reached the following conclusions:

"The article, known as Harris Roach Tabs, is an insecticide within the meaning of the insecticide act of 1910, as alleged in paragraph 4 of the libel.

"The evidence failed to sustain the allegations of paragraph 5 that the material is ineffective. The evidence on this point was conflicting in many respects, but there was material evidence that, at least under some conditions, the Roach Tabs have proven satisfactory to many persons, including Government departments, who prefer them to the powdered form of material, the reasonable effectiveness of which was not questioned.

"The evidence failed to sustain the allegations of paragraph 4 that the Roach Tabs are harmful and poisonous to human beings and pets.

"The evidence sustains the allegations of paragraph 7 in that the labels used thereon do not show, as required by law, the name and percentage of each of the inert substances or ingredients present in the Roach Tabs; nor, in lieu thereof, the name and percentage amount of the substances in such Roach Tabs having insecticidal properties and the total percentage of the inert substances or ingredients present in such Roach Tabs."

The court being of the opinion that the proof of the allegations of paragraph 7 of the petition is sufficient to sustain the libel, has signed the decree of condemnation under date of March 10, 1931. Filed now for then this May 2, 1931 for March 10, 1931.

ARTHUR M. HYDE, *Secretary of Agriculture.*